

ATTACHMENT 11

to the

**DECLARATION OF EVA FETTIG
ON BEHALF OF
AT&T COMMUNICATIONS OF THE SOUTHWEST, INC.**

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Application by SBC Communications Inc.,)	
Southwestern Bell Telephone Company, and)	CC Docket No. 00-4
Southwestern Bell Communications Services)	
Inc. d/b/a Southwestern Bell Long Distance)	
For Provision of In-Region, IntetLATA)	
Services in Texas)	

DECLARATION OF

SARAH DeYOUNG

ON BEHALF OF

AT&T CORP.

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**DECLARATION OF SARAH DeYOUNG
ON BEHALF OF AT&T CORP.**

1. My name is Sarah DeYoung. I am Division Manager - Local Services for AT&T's Southwestern/Pacific Region Local Services and Access Management Organization. In my position, I am responsible for the business relationship with SBC Communications Inc. ("SBC") as it relates to supporting AT&T's plans for entering the local telephone service market. Those responsibilities include negotiating with Southwestern Bell Telephone Company ("SWBT") -- as well as other SBC-owned regional telephone carriers, such as Pacific Bell and Southern New England Telephone -- to facilitate such local market entry by AT&T.

2. I have been employed by AT&T since 1982. In the course of my career, I have worked in various local exchange supplier management positions and in a wide variety of engineering and finance positions. In 1995, I managed AT&T's Total Services Resale and Loop Resale operational discussions with Ameritech. In 1996, I was Program Manager - Negotiations Support in AT&T's Central States region. In that position, I was responsible for supporting the executive team that led AT&T's interconnection negotiations with Ameritech and provided subject matter expertise on a number of local issues. In addition, since late 1996 until recently, I have also acted as AT&T's primary contact with Pacific Bell on all operations support system

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and operational issues associated with AT&T's market entry in the state of California. In my current position, I am actively involved with various SWBT teams that are responsible for working with AT&T as a local service provider. Among the teams or organizations at SWBT with which I (and members of my staff) have frequent - sometimes daily - contact are:

- SWBT's account team assigned to AT&T;
- SWBT systems representatives;
- SWBT's Local Service Centers ("LSC") and Local Operations Centers ("LOC"); and
- SWBT project teams implementing various system, operational and engineering changes at SWBT.

I. PURPOSE AND SUMMARY OF AFFIDAVIT

3. The purpose of this affidavit is to address whether SWBT provides interconnection as required by the 1996 Act. It plainly does not. SWBT's interconnection policy is inconsistent with Section 251(c)(2) of the 1996 Act, and it unnecessarily burdens AT&T's efforts to provide facilities-based residential service in Texas.

4. SWBT claims that it provides interconnection at any technically feasible point, including tandem switches.¹ This claim is not accurate. Instead, SWBT's interconnection policies require AT&T to establish a minimum of one point of interconnection ("POI") in each local exchange area in which AT&T intends to offer local service. Moreover, for each local exchange area that is not served by a tandem switch that SWBT utilizes to switch local traffic, AT&T is required not only to order or build facilities to the POI in that exchange, but also to

¹ Brief in Support of Application by Southwestern Bell for Provision of In-Region, InterLATA service in Texas, CC Docket No. 00-4 at 72-73 ("SWBT 271 Application").

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order trunk groups to every end office in that exchange.² SWBT refuses to permit AT&T to interconnect at the access tandems serving those exchange areas, which is technically feasible and more efficient. SWBT thus imposes highly inefficient interconnection arrangements that are flatly inconsistent with the 1996 Act and the Commission's rules. As discussed below, SWBT's unlawful requirements have forced AT&T to delay its market entry for its cable telephony service in McKinney, a suburb of Dallas, and has forced inefficient trunking arrangements in other areas that AT&T would otherwise not have established were it not for SWBT's interconnection policy.

5. As the Commission has repeatedly emphasized, the interconnection provisions of the 1996 Act permit a competing carrier to choose the most efficient points at which to interconnect on the incumbent's network. By requiring AT&T to establish a point of interconnection in each local exchange area and route traffic within that exchange area through direct trunk groups to each end office, SWBT has usurped AT&T's right to choose the most efficient, technically feasible points of interconnection. This requirement cannot be squared with the competing carriers' right to interconnect at any technically feasible point established in section 251.

II. THE APPLICABLE LEGAL STANDARD FOR INTERCONNECTION

6. Section 271(c)(2)(B)(i) requires SWBT to demonstrate that it provides interconnection in accordance with the requirements of sections 251(c)(2) and 252(d)(1).³ Section 251(c)(2), in turn, requires SWBT to provide "interconnection with the local exchange carrier's network . . . for the transmission and routing of telephone exchange service and

² SWBT's requirements in this regard have been confusing. It has been unclear whether AT&T must lease facilities or just order trunk groups to each end office. If it is the former, then AT&T's costs are materially increased.

³ 47 U.S.C. § 271(c)(2)(B)(i) (1999).

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exchange access.” Such interconnection must be provided “at any technically feasible point within the carrier’s network.”⁴

7. In its *Local Competition Order*, this Commission stated that section 251(c)(2) “allows competing carriers to choose the most efficient points at which to exchange traffic with incumbent LECs, thereby lowering the competing carriers’ costs of, among other things, transport and termination of traffic.”⁵ In so doing, the Commission recognized that inefficient interconnection arrangements constitute a barrier to entry. It thus found that section 251(c)(2) “lowers barriers to competitive entry for carriers that have not deployed ubiquitous networks by permitting them to select the points in an incumbent LEC’s network at which they wish to deliver traffic.”⁶

8. Moreover, the Commission has construed technical feasibility to refer solely to technical or operational concerns, rather than economic, space or site or billing considerations.⁷ It further concluded that the obligations of section 251(c)(2) include modifications to incumbent LEC facilities to the extent necessary to accommodate interconnection.⁸ Preexisting interconnection at a particular point is evidence of the technical feasibility of interconnection at a substantially similar point.⁹ In order to demonstrate that interconnection at a particular point is *not* technically feasible, the incumbent LEC must provide clear and convincing evidence that there are specific, significant and demonstrable network concerns associated with interconnection at that point.¹⁰

⁴ 47 U.S.C. § 251(2) (1999).

⁵ First Report and Order, *Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, 11 FCC Rcd. 15499, ¶ 172 (“*Local Competition Order*”).

⁶ *Id.* ¶ 209.

⁷ *Id.* ¶ 198; 47 C.F.R. § 51.5 (1998).

⁸ *Id.* ¶ 198.

⁹ *Id.* ¶ 198.

¹⁰ *Id.* ¶¶ 198, 203.

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9. The Commission has also identified a minimum list of technically feasible interconnection points that it found “critical to facilitating entry to competing local service providers,”¹¹ which includes the tandem switch. It has also found that the technical feasibility of interconnection at tandem switches is demonstrated by the fact that interexchange carriers and competing access providers use tandem switching facilities as interconnection points.¹²

10. Indeed, the Commission has found the right of a competing carrier to choose the point of interconnection, and conversely the unlawfulness of any attempts by incumbents to dictate points of interconnection, sufficiently clear and compelling to intervene in court reviews of interconnection disputes. In an interconnection dispute in which the precise issue presented here was at issue, the Commission intervened as *amicus curiae* and urged the court to reject US West’s argument that the Act requires competing carriers to “interconnect in the same local exchange in which it intends to provide local service.”¹³ There, it wrote “[n]othing in the 1996 Act or binding FCC regulations requires a new entrant to interconnect at multiple locations within a single LATA. Indeed, such a requirement could be so costly to new entrants that it would thwart the Act’s fundamental goal of opening local markets to competition.”¹⁴ District courts have agreed, and have rejected as inconsistent with Section 251(c)(2) incumbents’ efforts to require competing carriers to establish points of interconnection in each local calling area because such a requirement imposes undue costs and burdens on new entrants.¹⁵

¹¹ *Id.* ¶ 209.

¹² *Id.* ¶ 211.

¹³ Memorandum of the Federal Communications Commission as Amicus Curiae, at 20-21, *US West Communications Inc., v. AT&T Communications of the Pacific Northwest, Inc., et al.* (D Or. 1998) (No. CV 97-1575-JE).

¹⁴ *Id.* at 20.

¹⁵ See, e.g., *US West Communications v. AT&T Communications of the Pacific Northwest, Inc., et al.*, No. C97-1320R, 1998 U.S. Dist. LEXIS 22361 at *26 (W.D. Wa. July 21, 1998), (US West’s contention that the “Act requires a CLEC to have a POI in each local calling area in which that CLEC offers local service” is “wrong”); *US West Communications, Inc., v. Minnesota Public Utilities Commission, et al.*, No. Civ. 97-913 ADM/AJB, slip op. at 33-34 (D. Minn. 1999) (rejecting U S West’s argument that section 251(c)(2) requires at least one point of

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11. The law is thus clear. SWBT cannot dictate to AT&T where in SWBT's network AT&T must interconnect. AT&T is entitled to choose the most economically efficient points of interconnection and SWBT may not object absent a showing of technical infeasibility. The purpose of the Commission's policy is to prevent incumbent LECs from imposing inefficient interconnection terms on new entrants that preclude them from configuring their local service networks in the most efficient way. Incumbents cannot require additional points of interconnection for the purpose of reducing their own transportation costs and forcing those costs back on the new entrants. Unfortunately, this is exactly what SWBT's interconnection policy does.

III. SWBT'S UNLAWFUL INTERCONNECTION REGIME HINDERS AT&T'S LOCAL ENTRY PLANS IN TEXAS

12. AT&T intends to be an aggressive, effective competitor for local service in the state of Texas. AT&T is pursuing a variety of entry strategies to provide competitive local service, including facilities-based service through upgraded cable facilities to provide service to residential customers and facilities-based service to small and large business customers. In pursuit of its cable strategy, AT&T is conducting testing of its cable offerings in several areas in Texas. See Tonge/Rutan Decl. ¶ 17. AT&T is also serving small and large business customers either by utilizing AT&T facilities exclusively or by utilizing two or four-wire loop leased from

interconnection in each local calling exchange served by US West.”)(attached hereto as Attachment 1); *US West Communication, Inc., v. Arizona Corporation Commission*, 46 F.Supp. 2d 1004, 1021 (D.Ariz. 1999) (“The court also rejects U S West’s contention that a CLEC is always required to establish a point of interconnection in each local exchange in which it intends to provide service. That could impose a substantial burden upon CLECs, particularly if they employ a different network architecture than U.S. West”); *US West Communications, Inc. v. AT&T Communications of the Pacific Northwest, Inc., et al.*, 31 F. Supp. 2d 839, 852 (D. Or. 1998) (“Although the court agrees with US West that the Act does not define the minimum number of interconnection points, the court also rejects US West’s contention that a CLEC is required to establish a point of interconnection in each local exchange in which it intends to provide service. That is not legally required, and the cost might well be prohibitive for prospective customers.”); *see also US West Communications, Inc. v. MFS Intelenet, Inc.*, No. C97-222WD, 1998 WL 350588, *3 (W.D. Wa. 1998), *aff’d US West Communications v. MFS Intelenet, Inc.*, 193 F.3d 1112, 1124 (9th Cir. 1999).

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SWBT, all of which are similarly affected by SWBT's unlawful POI requirement. SWBT's interconnection policies unlawfully hinder these facilities-based entry plans. Indeed, as discussed below, SWBT's interconnection requirements materially delayed service readiness testing of AT&T's cable telephony offering in the McKinney exchange in Texas.

A. SWBT's Network Architecture

13. SWBT's operating area in Texas is divided into 300 local exchange areas, which essentially define the boundaries of local service.¹⁶ Calls that originate and terminate within the exchange area are not subject to toll charges.

14. The network architecture SWBT has deployed in Texas and other southwestern states utilizes end office switches, local tandem switches, access tandem switches, and combination access/local tandem switches. In SWBT states, including Texas, SWBT uses some tandems to switch only local traffic among the end offices that subtend that tandem (a "local tandem"), and uses other tandems to switch intraLATA and interLATA toll traffic (an "access tandem"). A combined tandem, as its name implies, switches local as well as intraLATA and interLATA toll traffic. This architecture is described in the SBC-Thirteen State Generic Interconnection Agreement ("SBC-13 State Agreement"), which is the model that SBC uses to negotiate interconnection agreements in its thirteen state region.¹⁷ The deployment of end office switches and the relationship between these switches and tandem switches differs from exchange

¹⁶ Although local exchange areas define the geographic area within which local service is provided by the incumbent LEC, AT&T does not agree that a competing carrier's local calling area invariably must match the local calling area established for incumbent LECs.

¹⁷ SBC-13 State Generic Interconnection Agreement, Appendix ITR (Interconnection Trunking Requirements), at 4.1 ("SBC-13STATE deploys in its network Tandems that switch local only traffic (local Tandem SBC-SWBT only), Tandems that switch IntraLATA and InterLATA traffic (Access Tandem) and Tandems that switch both local and IntraLATA/InterLATA traffic (local/Access Tandem).") ("SBC-13 State Agreement"). The relevant sections of the SBC-13 State Agreement are attached as Attachment 2.

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area to exchange area in the SWBT states.¹⁸ In contrast, other BOCs, most notably SWBT's affiliates Pacific Bell and Ameritech, have not deployed separate tandem switches that route only local or toll traffic and CLECs may interconnect at the tandem switches in those regions.¹⁹

15. A number of exchange areas in Texas are not served by a local or combined tandem. In those areas, SWBT's network architecture relies solely on the direct trunking for the exchange of local traffic between end offices, rather than routing local traffic through tandem switches. According to estimates by SWBT, of its approximately 900 central offices and remote switches in Texas, about thirty percent (30%) to thirty-five (35%) do not subtend or home to a local tandem.²⁰ As explained below, it is the areas in which these central offices and remote switches are located that create the greatest concern under SWBT's interconnection policy.

B. SWBT's Unlawful Interconnection Requirements

16. SWBT's unlawful requirement that CLECs must establish a point of interconnection in each local exchange area is set forth in SWBT's Texas 271 Agreement or "T2A." The T2A provides that "[i]n each SWBT Exchange Area in which CLEC offers local exchange service, the Parties *will* interconnect their network facilities at a minimum of one mutually agreeable²¹ Point of Interconnection ("POI.")"²² As this requirement was beyond the

¹⁸ SBC-13 State Agreement, App. NIM (Network Interconnection Methods), at 2.1 ("SBC-13 STATE'S network architecture in any given local exchange area and/or LATA can vary markedly from another local exchange area/LATA").

¹⁹ See SBC-13 State Agreement, App. NIM, at 2.1.

²⁰ For planning purposes, AT&T has been seeking information on how many end offices or remote switches are implicated by SWBT's policies. SWBT informed AT&T that it would have to lease facilities to some remote switches but not to others. Remote switches that serve sparsely populated areas are tied to a host switch by a DS-1 facility. AT&T apparently will not have to lease facilities to such remote switches. Other remote switches serve fast growing areas and have direct trunk groups to a number of end offices. For those cases, AT&T will have to lease facilities to the remote switches.

²¹ The requirement that the point of interconnection be "mutually agreeable" is itself inconsistent with the 1996 Act and the Commission's regulations. Competing carriers have the right to interconnect at any technically feasible point in the incumbent's network, and incumbents have no right to veto such a choice if it is technically feasible. While efficiency of interoperability is generally enhanced through mutual agreement of the parties, SWBT has no

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scope of the Memorandum of Understanding reached with the Texas PUC, CLECs did not have an opportunity to object to this provision before the T2A was approved by the Texas Commission.²³ Additionally, SWBT's policy, as is made clear in the SBC-13 State Agreement described below, is to require CLECs, having delivered their traffic into the exchange area, to also order trunking to each end office in a local exchange in which there is no local tandem.²⁴

17. The SBC -13 State Agreement requires CLECs in Texas (and the other four states that comprise SWBT's territory) to interconnect in each local exchange area. Section 2.1 of that agreement provides that "[d]ue to differing state regulatory calling scope requirements, SBC-SWBT and SNET requires Interconnection in each local exchange area while Pacific, Nevada and SBC-Ameritech require Interconnection at all Tandems in a LATA."²⁵ The SBC-13 State Agreement thus reflects the differing network architecture in SBC's various regions. In California, Nevada, and the former Ameritech states, CLECs may at least interconnect at the tandems within a LATA. In those states, there is thus no requirement that competing carriers establish an interconnection point in each local exchange area. This differing treatment is also

legal right to require its acquiescence before AT&T may designate a technically feasible point of interconnection.

²² Southwestern Bell Telephone Company's Texas 271 Agreement ("T2A"), Attachment 11, section 1.1 (emphasis added). Attachment 11 governs the network interconnection architecture "by which CLEC and SWBT will interconnect their networks in the event that CLEC is providing its own switching facilities in a given Exchange Area."

²³ This provision also exists in AT&T's current interconnection agreement with SWBT, which was negotiated in 1996. At that time, AT&T strategy was to move forward on non-facilities based market entry.

²⁴ This policy is also reflected in the interconnection requirements SWBT imposed on AT&T to interconnect in the McKinney exchange in Texas. SWBT's interconnection requirements for McKinney were set forth in a diagram depicting the point of interconnection and the end offices to which AT&T must order trunk groups. *See CLEC/Southwestern Bell Interconnection Architecture for the McKinney Local Calling Area*, attached as Attachment 2 hereto. Pursuant to the terms set forth in this document, AT&T "will order 2-way trunking between all end offices shown above which are local to McKinney customers." The burdens imposed on AT&T's efforts to provide service in the McKinney area are described in Part V below.

²⁵ *See SBC-13 State Agreement*, App. NIM, at 2.1. That agreement defines SBC-SWBT as the incumbent doing business in Texas as well as Missouri, Kansas, Arkansas and Oklahoma. *SBC-13 State Generic*, App. NIM, at 1.3. *See also SBC-13 State Agreement*, App. NIM, at 1.9 (identifying network interconnection methods that may be "used to effect the Interconnection in each local exchange (in SBC-SWBT...)") (emphasis added).

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reflected in the trunking requirements set forth in the SBC-13 State Agreement. In describing the interconnection trunking in each local exchange area in the SWBT region, the agreement provides that “[a] local trunk group shall be established from CLEC switch to each SBC-SWBT

End Office in a local exchange area that has no local Tandem.”²⁶ Finally, the agreement makes clear that no tandem switching will be performed by the End Office switch.²⁷

18. The statement in the SBC-13 State Agreement that CLECs must interconnect in each local exchange area due to differing state calling scope requirements is nonsensical. All states -- including those in which SBC does not impose the POI requirement at issue here -- identify geographic areas within which calls are charged at local rates. The identification of such areas, however, has no bearing on the CLEC’s right to choose the most efficient, technically feasible points of interconnection.

19. In response to AT&T’s complaints about this onerous requirement, SWBT has attempted to justify its policy on the ground that it routes its own traffic in the affected local exchange areas via direct trunk groups to each end office²⁸ But SWBT’s purported justification misses the mark. Because of its historical position as the monopoly provider of local service, SWBT has sufficient traffic to warrant direct trunking to every end office within its local calling areas. AT&T and other new entrants clearly do not have sufficient volumes of traffic to

²⁶ SBC-13 State Agreement, App. ITR, at 5.2.3. *See also* SBC-13 State Agreement, App. ITR, at 4.4. (CLECs “shall establish a two-way direct End Office trunk group when . . . no local or local/access tandem is present in the local exchange area.”)

²⁷ SBC-13 State Agreement, App. ITR, at 4.5.

²⁸ SWBT may also argue that its requirement that CLECs establish a POI in each local exchange area is necessary to avoid SWBT having to pay “unreasonable” reciprocal compensation rates, particularly to CLECs terminating traffic to internet services providers. AT&T readily agrees that reasonable reciprocal compensation arrangements are necessary. Concerns about reciprocal compensation, however, cannot justify unlawful interconnection requirements. And, to the extent SWBT’s interconnection regime is premised on its desire to avoid costs, such concerns have no place in determining technically feasible points of interconnection. *See Local Competition Order* ¶ 199 (“We find that the 1996 Act bars consideration of costs in determining ‘technically feasible’ points of interconnection or access.”).

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economically utilize trunk groups to each end office within an exchange. Indeed, this requirement results in needless and wasteful deployment of underutilized trunk groups.

20 These inefficiencies could be alleviated if SWBT would permit AT&T to deliver its traffic to the access tandem serving the end offices in the areas not served by a local tandem. SWBT, however, has rejected AT&T's requests to interconnect at the access tandem. Interconnection at the access tandem, however, as demonstrated by the fact that other incumbent LECs permit it, is clearly technically feasible. Thus, there is no legally permissible basis for SWBT's refusal to permit AT&T to establish a point of interconnection at the access tandem. That SWBT has chosen not to switch local traffic through its access tandem is no reason to deny AT&T the ability to do so, if AT&T determines that is the most efficient, cost effective point at which to exchange traffic with SWBT. If modification to SWBT's network is required to permit efficient interconnection, the Commission's rules clearly dictate that such modification must be made. As stated in the Local Competition Order:

[T]he term 'feasible' implies that interconnecting or providing access to a LEC network element may be feasible at a particular point even if such interconnection or access requires a novel use of, or some modification to, incumbent LEC equipment. This interpretation is consistent with the fact that incumbent LEC networks were not designed to accommodate third-party interconnection . . . at all or even most points within the network. If incumbent LECs were not required, at least to some extent, to adapt their facilities to interconnection or use by other carriers, the purpose of sections 251(c)(2) and 251(c)(3) would often be frustrated.²⁹

IV. SWBT'S INTERCONNECTION REQUIREMENTS CREATE A BARRIER TO ENTRY

21. SWBT's policy imposes real world harm to AT&T as it seeks to provide facilities-based competitive service in Texas. The most vivid example of the inefficiencies imposed by SWBT's illegal interconnection regime arose in connection with AT&T's desire to

²⁹ *Local Competition Order* ¶ 202.

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conduct service readiness testing of its cable offering in the McKinney local calling area, a suburb of Dallas. Service readiness testing is the last step of a lengthy process of planning and testing before the roll out of service. As AT&T sought to begin that testing, SWBT advised AT&T that it needed to establish a point of interconnection in the McKinney exchange. Because McKinney is one of those exchange areas in Texas in which the end offices are not served by a local tandem, AT&T requested such interconnection at the access tandem serving those end offices. SWBT rejected this request. Instead, it required AT&T to establish a point of interconnection within the McKinney exchange located at the McKinney central office. SWBT also required AT&T to establish trunk groups to each of the six end offices within the McKinney local exchange area.³⁰

22. As explained below, SWBT's policies have materially delayed AT&T's entry into the McKinney area. One effect of this delay in AT&T's cable service readiness test in McKinney is that AT&T accelerated a planned telephony over cable market entry in an area in Missouri that was not affected by this requirement. Thus, as a result of SWBT's anticompetitive policies, not only were AT&T's market entry plans disrupted, but Texas consumers lost out as well.

23. Specifically as to McKinney, SWBT's requirements delayed AT&T's service readiness testing and the subsequent general availability of service by at least three months. AT&T's original plans called for telephony over cable testing to begin on November 1, 1999, in four cable systems in the Dallas area that are served by a common cable hub. Three of the cable systems, McKinney, Stonebridge and Frisco are all part of the McKinney rate center, as is a portion of the Allen cable system. As AT&T made preparations for the service readiness test,

³⁰ CLEC/Southwestern Bell Interconnection Architecture for the McKinney Local Calling Area, attached as Attachment 3 hereto. Pursuant to the terms set forth in this document, AT&T

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and in the course of discussing 911 related trunking issues with SWBT in mid-October 1999, SWBT advised AT&T that a POI had not been established in the McKinney calling area in which the three cable systems were located. AT&T local service planners and engineers reviewed SWBT's complex POI requirements along with the Local Exchange Routing Guide (LERG) in an effort to understand how interconnection would be accomplished and what the practical alternatives were. Unfortunately, the LERG does not contain the information necessary to determine whether a particular end office subtends a local or combined tandem. This information is vital under SWBT's interconnection regime as the absence of those tandems triggers SWBT's requirement for direct trunking to each end office in the exchange. Because the LERG was unclear, AT&T had to request SWBT for further clarification. On November 11, 1999 SWBT provided AT&T with a proposed POI architecture and local calling scope for McKinney. Even then, it took a significant amount of time for AT&T engineers to dissect SWBT's POI requirements for this area. As a direct consequence, AT&T's testing has been delayed until February 2000, and along with it, competition has been further delayed for the consumers in the 51,831 homes passed by these cable systems. This delay would not have occurred if SWBT had permitted AT&T the option of interconnecting at the access tandem that serves the McKinney end offices, as SWBT is legally required to do.

24. SWBT's requirement to establish facilities to each local exchange area rather than permitting interconnection at the tandem, increases new entrant's costs. Again, the interconnection requirements for McKinney serve as an example. The point of interconnection at McKinney serves as a facility junction point. In this example, AT&T had to build or lease facilities from its switch to the McKinney POI. If AT&T were allowed instead to interconnect at

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the tandem, AT&T would not have to purchase as many facilities as there are exchanges, but rather only the facilities necessary to accommodate the traffic.

25 AT&T will incur costs in other ways. Because of the additional facilities needed between AT&T's switch and the POI, as discussed above, the trunk port capacity of AT&T's switch is used inefficiently and may exhaust prematurely. The additional trunking requirements also force AT&T and other CLECs to incur the additional expense of managing unnecessary (and indeed inefficient) trunk groups. For example, AT&T must monitor the trunk groups for blockage and order additional trunk groups should blockage begin to occur. All of these planning and management functions increase AT&T's costs and, more to the point, are needlessly wasteful.

26 Moreover, as the McKinney example illustrates, SWBT's unlawful requirement wreaks havoc on AT&T's ability to plan its facilities-based entry strategy because SWBT's published documentation does not accurately identify end offices to which AT&T must order direct trunking. As noted above, AT&T (and other CLECs) cannot determine by accessing information in the LERG whether end offices subtend a tandem or not. Because the LERG cannot be used to accurately predict the impact of SWBT's POI requirements, there is a strong likelihood that planning errors will be made. If these errors are not identified sufficiently far in advance of a market entry, the entry will be delayed. SWBT acknowledges that the inability to identify end office trunking requirements has been confusing to all CLECs and is in the process of upgrading the information in the LERG. Even after this upgrade, however, SWBT has acknowledged that CLECs will still not be able to determine from the LERG when they will have to order trunk groups to remote switches.³¹

³¹ See, *supra* note 20.

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27. Finally, McKinney is illustrative, but not isolated. As noted above, fully thirty to thirty-five percent of SWBT's 900 central offices and remote switches in Texas are configured like the central offices in McKinney. SWBT's interconnection policies thus have the potential to inflict sizable costs and delays on facilities-based competitors.

CONCLUSION

28. SWBT's policy usurps AT&T's right to determine the most efficient and economical point of interconnection. It has caused unnecessary delay and confusion and hindered AT&T's efforts to provide Texas residential consumers a choice for local telephone service.

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I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on January 28, 2000

Sam C. Young



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of In-Region, InterLATA Services)	
In Kansas and Oklahoma		

**DECLARATION OF MICHAEL LIEBERMAN
ON BEHALF OF AT&T CORP.**

Michael Lieberman does hereby depose and states as follows:

I. Background and Summary

1. My name is Michael R. Lieberman. I am a District Manager in AT&T's Law and Government Affairs organization. In this position I am responsible for providing financial and industry analysis support to AT&T's policies related to the costing and pricing of local telecommunications services. I was AT&T's primary participant in the development of the HAI/Hatfield Model of forward looking economic costs of local exchange networks and services and have been responsible for evaluating other costing models and methodologies such as the BCPM and the FCC's Synthesis Model. I have a Bachelor's degree in mathematics and a Master's degree in statistics from the State University of New York at Stony Brook. Prior to joining AT&T as a statistical consultant in 1978, I was an bio-statistical consultant with Carter-Wallace of Cranbury New Jersey. My testimony relates primarily to the evaluation of the profit potential for residential UNE-P competition in SWBT OK territory.

2. As I demonstrate below, the conditions necessary to support competitive entry do not exist in Oklahoma, because SWBT's Oklahoma UNE prices are far too high to support mass

market UNE offerings. Even taking full account for all the revenues and benefits from being a local service provider, it is profoundly uneconomic for AT&T (or any other entrant) to make a statewide offer of UNE-P based local services. This provides powerful evidence that SWBT's Oklahoma UNE rates are not properly cost-based.

II. Oklahoma Margin Analysis

3. At current prices, UNE-based competition is not viable in Oklahoma. Demonstrating that this is so is relatively straightforward. The viability of a UNE-based offering – that is, whether it makes sense for AT&T (or any other entrant) to commit its shareholders' capital to that enterprise – turns on the same type of analysis as any other substantial investment decision. Capital is scarce and must be devoted to its highest-valued uses. Thus, a carrier considering whether to enter the local services business in a state (or to continue to participate in that business) must determine whether revenues attributable to the service will exceed the costs of providing the service by an amount sufficient to generate a return that is commensurate with the expectations of investors concerning risks and returns and with competing uses for the capital.

4. There are essentially three steps to any such analysis: (1) identifying and estimating each of the costs of providing the service, (2) identifying and estimating each of the revenue opportunities that will be generated by providing the service, and (3) deriving from these estimated "cash flows" some standard financial measure that allows the investment opportunity to be assessed (and compared to alternative investment opportunities).

5. As always with line-of-business financial analyses of this type, certain assumptions must be made. There is much less room for debate about the appropriateness of assumptions in the UNE-P context than is ordinarily the case, however, because many of the

relevant “inputs,” including retail local service prices, UNE prices, and access prices are publicly reported and directly verifiable. As a result, I am confident that the following analysis paints an accurate picture of the barrier existing UNE prices in Oklahoma pose to residential competition in that state. I should note AT&T (and, almost certainly, other carriers) use this same type of analysis in making their actual business decisions whether to provide UNE-P based service in particular markets. And the answer supplied by this analysis – that, at current UNE prices, a mass market UNE-Platform-based offering is not viable – is not even a close question.

6. The remainder of my declaration is organized into three subsections. The first subsection describes the costs associated with a UNE-Platform offering in Oklahoma. The second describes the associated revenues. And the third translates these cash flows into margins, a type of financial measures upon which business decisions are commonly based, to show why profitable UNE-Platform-based offerings simply are not possible in Oklahoma absent substantial UNE rate reductions. Exhibit 1 to my declaration, entitled “UNE Connectivity Margin for SWBT Oklahoma,” summarizes the results of my cost, revenue and margin analysis. I refer to and generally follow the order of this Exhibit 1 in the discussion below. I also refer to supporting Exhibits [2-7], which provide additional detail on the assumptions and calculations underlying Exhibit 1.

7. **Costs.** There are two basic categories of costs associated with UNE-Platform-based services: (1) “connectivity” costs, or the costs associated with purchasing the necessary network elements from the incumbent, and (2) own internal costs of running the local services business, including marketing, customer care, developing, maintaining and operating computer support systems, and administration. My analysis focuses on the former, which are readily identifiable and verifiable.

8. My analysis of connectivity costs uses the same rates in the UNE pricing attachment (Attachment 6) to the Oklahoma 271 Agreement (“O2A Rates”) that SWBT relies upon its application in this proceeding.¹

9. The O2A rates for UNE loops are \$35.00/month in Zone 1, \$18.00 in Zone 2, and \$13.00 in Zone 3. For UNE ports, new entrants pay \$2.58/month in Zone 1, \$2.21/month in Zone 2, and \$2.18/month in Zone 3. These and the other relevant O2A rates are listed in Exhibit 2 to my declaration.

10. Most other network elements are charged on a usage basis. Thus, although the per minute rates are published, any analysis of UNE-based service profitability requires usage data and assumptions. Oklahoma usage data can be obtained from SWBT’s annual DEM (or “dial equipment minutes”) submissions to NECA (the same type of data employed by the Commission’s Synthesis Cost Model). SWBT’s 1999 reported DEMs can be converted to DEM-equivalent conversation minutes for the year 2000 simply by inflating the 1999 figures by the annual growth rate between 1998 and 1999 and by dividing this figure by 2 (because, by definition, two DEMs are recorded for each conversation minute). This calculation of “conversation minutes” retains the non-conversation time that is reflected in DEM and is

¹ I understand that lower promotional rates have recently become available for some elements. Precisely because those rates are promotional – and, as I understand it, subject to significant limitations – it would be imprudent to base a business decision whether or not to enter on those promotional rates. This is because many of the costs that AT&T would incur to enter the local market in Oklahoma using the UNE-Platform, (e.g., development of customer billing systems, marketing programs and other operations support systems that are specific to the market character of Oklahoma and compliant with the idiosyncratic service definitions and other regulations of the Oklahoma PUC are costs that once incurred, become sunk. No company would make such irreversible sunk investments unless it can anticipate a stable or improving economic environment. “Promotional” rates are, by definition and intent, rates that cannot be relied on over an extended period of time.

likewise paid for under UNEs. These calculations for local, intraLATA toll, intrastate interLATA, and interstate usage are detailed in Exhibit 5 to my declaration.

11. Once an Oklahoma customer's expected minutes of use are determined in this fashion, the minutes of use for each category (local, intraLATA toll etc.) must be further apportioned to reflect the fact that some local calls are "intraswitch" calls (where the calling and called parties are served by the same switch), some are "interswitch" calls, and of these interswitch calls, some are routed directly between the two local switches while others are routed via a tandem. As the Commission's Synthesis Model recognizes, approximately 2 percent of local interswitch minutes and 20 percent of intraLATA toll and interLATA minutes are tandem-routed. Approximately [xxxxxxxxxxxxxxxxxxxxxxxxxxxx] percent of local calls in SWBT's network will be intraswitch calls.² The calculated intraswitch, interswitch, and tandem conversation minutes (or, in the case of toll calls, the toll direct and toll tandem conversation minutes) are then multiplied by the corresponding O2A usage charges to arrive at expected monthly usage costs per line, as detailed in Exhibit 3 to my declaration.³ The total monthly usage charges per line, which are listed in Exhibit 1, are: [xxxxxxxxxxxxxxxxxxxxxxxxxxxx].⁴

² Although the Commission's Synthesis Model recognizes that about 50 percent of local calls would be intraswitch calls in an efficiently designed network with properly sized switches, the relevant figure for a new entrant contemplating entry is what it will actually pay SWBT. Because SWBT's existing network is not efficiently designed and sometimes uses two switches where one would do, the 35 percent figure must be used to determine expected connectivity costs that will be billed by SWBT to the competing carrier.

³ The signaling charge calculations, a very small portion of total usage charges, are also contained in Exhibit 4. As signaling is assessed per message, an estimate of messages per minute is developed and is applied to the message rate.

⁴ UNE purchasers must pay switching, transport and related usage charges for access-related usage whether a call is originated or terminated by their customer, and the assumption is that the customer receive as much access traffic as he or she originates. For intraLATA toll and local traffic, for every originating minute, there is a terminating minute to another customer (for

12. The next line item cost on Exhibit is the DUF (or “Daily Usage Feed”) charge of [xxxxxxxxxxxxxxxxxxxxxx] (for the reports provided by SWBT). This figure reflects the actual AT&T/SWBT experience in Texas.

13. In total, the average recurring monthly connectivity costs (loop plus usage plus DUF) to serve an Oklahoma customer is \$29.49. This is an average of the monthly connectivity costs for Zone 1 (\$48.01), 2 (\$27.91) and 3 (\$22.13) weighted by the number of estimated residence lines in each zone served by SWBT. See Exhibit 1. When the O2A conversion charge of \$5.00 is added (amortized over three years), the total monthly platform cost in Oklahoma is \$29.49 (and ranges from \$48.15 in Zone 1 to \$22.27 in Zone 3). It also bears noting that this analysis ignores the prohibitively high and clearly non-TELRIC new customer NRC charges which add up to over one hundred dollars.

14. In addition to purchasing connectivity from the incumbent LEC, a UNE-Platform-based provider must sell and bill its service, provide customer care, and generally run its local services business. AT&T’s actual experience in New York has been that these internal “running the business” costs (including costs associated with maintaining and updating the necessary databases and systems) are quite significant, particularly in the early years. As demonstrated below, however, the Oklahoma “gross” margins (before considering internal retailing and other “running the business” costs) are so low – indeed, negative overall and in two of the three rate zones – that there is no need to analyze internal retailing costs to reach the conclusion that UNE-based entry is uneconomic at the current Oklahoma rates.

simplicity assumed to be served by the same ILEC) in the ILEC’s service area. Note that the usage cost estimate is unaffected by reciprocal compensation assumptions as, for SWBT OK, the termination of the local and intraLATA toll traffic pays reciprocal compensation. In the case of local traffic terminating to our UNE-P customer, bill and keep is assumed since there would be offsetting local switching expense and reciprocal compensation revenues.

15. **Revenues.** The SWBT local service rates that UNE-Platform-based providers must meet to be competitive range from \$11.20/month in Zone 1 to \$13.66/month in Zone 3.⁵ This is obviously much less than even the direct connectivity costs that a new entrant must pay to SWBT.

16. There are, of course, other revenue opportunities to consider. For example, a local service provider can expect to sell vertical features to many customers. SWBT's tariffed rates for these services (with which a new entrant must obviously be competitive), adjusted for their penetration rates are listed in Exhibit 1. Based upon data provided by TNS (formerly PNR), SWBT's Oklahoma penetration rates for caller ID, Call Waiting, and Call Forwarding are [xxxxxxxxxxxxxxxxxxxxxxxxxxxx], respectively. Thus, a new entrant can expect, on average, to receive about [xxxxxxxxxxxxxxxxxxxxxxxxxxxx] in vertical feature revenue. The federal Subscriber Line Charge brings in an additional \$4.35/month/line. Total expected customer revenue therefore averages a little less than \$23/month (ranging from a little over \$21/month in Zone 1 to a little less than \$24/month in Zone 3).

17. A UNE-Platform-based provider also earns access revenues for originating and terminating long distance calls. AT&T's analysis recognizes access revenues even when (as is often the case) the customer's long distance carrier is AT&T and there are therefore no actual access revenues, but only access savings. Estimating access revenues is a simply matter of multiplying expected toll minutes (derived from the SWBT DEM data described above) by the relevant access charges (from SWBT intrastate and interstate tariffs) that AT&T can replace with

⁵ These reflect retail 1FR rates as reported by CCM Rate Information, Section 3.1, Sheet 3 (effective November 1, 1999) list in Exhibit 6. The 1FR rates by wire center are weighted together to estimate the average basic local service revenue per line by UNE zone as listed in Exhibit 7.

UNEs.⁶ These calculations, which produce estimated monthly per line access charge revenue of [xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx], are detailed in Exhibit 5.

18. In total, AT&T (or another entrant) could expect to receive revenues that average \$27.73/line/month from a UNE-based service in Oklahoma (or between \$26.05 and \$28.51 /line/month, depending upon the density zone).

19. **Margin.** There are many standard financial measures for assessing profitability and/or the propriety of investing (or continuing) in a line of business. The simplest is to compare expected costs with expected revenues to determine a margin per line. A “gross” UNE-P margin can be determined by subtracting expected direct connectivity costs from expected revenues. A “net” UNE-P margin can be determined by subtracting all expected costs (connectivity and running the business) from expected revenues. As detailed below, the gross margins in Oklahoma are *negative* in two of the three rate zones. Indeed, the *statewide* average expected gross margin is a negative \$1.76 – *i.e.*, a new entrant could expect to lose this amount money per customer per month even before accounting for the very significant costs of running its local services business. The gross margin is positive in the metro rate zone, but is not adequate to support UNE-based entry when customer care and other costs are considered – as they must be in determining whether it makes sense to market UNE-Platform-based local services. Even if this one zone were sufficiently profitable for targeted entry, a revenue-neutral rate rebalancing that more aligned local rates with underlying costs would immediately sink the venture.

⁶ Dedicated transport access charges are not included because AT&T does not avoid these access charges when providing UNE-based local service.

Connectivity Margin for SWBT Oklahoma Without Promotional UNE Rates

Zone weights		25%	12%	63%
Loop	\$ 19.15	\$ 35.00	\$ 18.00	\$ 13.00
Port	\$ 2.28	\$ 2.58	\$ 2.21	\$ 2.18
Usage	\$ 6.32	\$ 8.83	\$ 6.10	\$ 5.35
DUF	\$ 1.60	\$ 1.60	\$ 1.60	\$ 1.60
Platform - Recurring Cost	\$ 29.35	\$ 48.01	\$ 27.91	\$ 22.13
Conversion Chg. (\$5.00 spread over 36 month customer life)	\$ 0.14	\$ 0.14	\$ 0.14	\$ 0.14
Total Platform (w/NRC)	\$ 29.49	\$ 48.15	\$ 28.05	\$ 22.27

REVENUES RES @ SWBT

Basic Local Svc

Residence Metro/Zone 3 \$ 13.66

Zone 2 \$ 12.35

Zone 1 \$ 11.20

Basic Local Svc - Statewide \$ 12.88

Caller ID (Name & Number) \$ 2.78

Call Waiting \$ 1.43

Call Forwarding \$ 1.43

Sub. Line Chg. \$ 4.35

Access \$ 4.86

Total Revenue

Residence Metro/Zone 3 \$ 28.51

Zone 2 \$ 27.19

Zone 1 \$ 26.05

Total Revenue -Statewide \$ 27.73

MARGINS RES @ SWBT

Residence Metro/Zone 3 \$ 6.24

Zone 2 \$ (0.86)

Zone 1 \$ (22.10)

Residence Statewide \$ (1.76)

Connectivity Margin -6%

Feature Penetration Rate Assumption

38%


48%

23%

IV. Conclusion

20. In short, one need look no further than simple gross margin analyses to recognize that current UNE prices in Oklahoma states are far too high to support mass market UNE offerings. These analyses conclusively demonstrate that the conditions necessary to support competitive entry do not exist in Oklahoma. Even taking full account for all the revenues and benefits from being a local service provider, it is profoundly uneconomic for AT&T (or any other entrant) to make a widespread offer of UNE-P based local services.

I, Michael R. Lieberman, hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.


Michael R. Lieberman

November 14, 2000

Attachment 1
to the
Declaration of Michael Lieberman
On Behalf of
AT&T Communications of the Southwest, Inc.

**THIS ATTACHMENT IS BEING FILED
UNDER SEAL PURSUANT TO PROTECTIVE ORDER**

Attachment 2

to the

Declaration of Michael Lieberman

On Behalf of

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Attachment 3

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Attachment 4

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Attachment 6

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Attachment 7

to the

Declaration of Michael Lieberman

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